

BRAE CORPORATION

RECORDATION NO. 10844 ✓
Filed & Recorded

SEP 11 1986 10-05 AM

INTERSTATE COMMERCE COMMISSION

VIA HAND DELIVERY

September 9, 1986

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
12th & Constitution, Room 2215
Washington, D.C. 20423

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. Section 11303 are the following documents:

It is requested that the following documents be filed and recorded under the names of the parties as set forth below. In view of the fact that they relate to the Security Agreement Chattel Mortgage and Lease Assignment dated as of September 20, 1979 between BRAE Transportation, Inc. (formerly BRAE Corporation) and Citicorp Capital Investors previously recorded and assigned recordation number 10844, we request that they be assigned the next available letter designations under that primary number.

1. One original and five copies of the LEASE AGREEMENT dated as of December 1, 1984 between BRAE TRANSPORTATION, INC. as Lessor and SEABOARD SYSTEM RAILROAD as Lessee. This document relates to 215 covered hoppers AAR Mechanical Designation LO, marked SBD 252807 - 253013. The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and SEABOARD SYSTEMS RAILROAD, 500 Water Street, Jacksonville, Florida 32202

2. One certified copy and five copies of the LEASE AGREEMENT dated as of June 15, 1985 between BRAE TRANSPORTATION, INC. as Lessor and DELTA TRANSPORTATION COMPANY as Lessee. This document relates to 13 covered hoppers AAR Mechanical Designation LO, marked CAGY 260426 - 260544. The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and DELTA TRANSPORTATION COMPANY, P.O. Box 6000, Columbus, Mississippi 39701

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3. Two originals and five copies of the EIGHTH AMENDMENT AGREEMENT dated as of April 9, 1986 between BRAE TRANSPORTATION, INC. and CITICORP INDUSTRIAL CREDIT, INC. The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and CITICORP INDUSTRIAL CREDIT, INC., 450 Mamaroneck Avenue, 3rd Floor, Harrison, New York 10528

4. Two originals and five copies of the NINTH AMENDMENT AGREEMENT dated as of April 29, 1986 between BRAE TRANSPORTATION, INC. and CITICORP INDUSTRIAL CREDIT, INC. The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and CITICORP INDUSTRIAL CREDIT, INC., 450 Mamaroneck Avenue, 3rd Floor, Harrison, New York 10528

5. Two originals and five copies of the TENTH AMENDMENT AGREEMENT dated as of April 29, 1986 between BRAE TRANSPORTATION, INC. and CITICORP INDUSTRIAL CREDIT, INC. The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and CITICORP INDUSTRIAL CREDIT, INC., 450 Mamaroneck Avenue, 3rd Floor, Harrison, New York 10528

6. Two originals and five copies of the PARTICIPATION AGREEMENT dated as of June 2, 1986 between BRAE RAILCAR MANAGEMENT, INC., BRAE TRANSPORTATION, INC. and CITICORP INDUSTRIAL CREDIT, INC. The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE RAILCAR MANAGEMENT, INC. and BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and CITICORP INDUSTRIAL CREDIT, INC., 450 Mamaroneck Avenue, 3rd Floor, Harrison, New York 10528

It is requested that the following documents be filed and recorded under the names of the parties as set forth below. In view of the fact that they relate to the EQUIPMENT TRUST AGREEMENT dated as of June 1, 1979 between BRAE TRANSPORTATION, INC. (formerly BRAE Corporation) and Morgan Guaranty Trust COMPANY of New York (as Trustee) previously recorded and assigned recordation number 11303, we request that they be assigned the next available letter designations under that primary number.

1. Two originals and five copies of the NINTH AMENDMENT dated as of May 5, 1986 between BRAE TRANSPORTATION, INC. and MORGAN GUARANTY TRUST COMPANY OF NEW YORK (as Trustee). The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and MORGAN GUARANTY TRUST COMPANY of New York, 30 West Broadway, New York, New York 10015

2. Two originals and five copies of the TENTH AMENDMENT dated as of May 8, 1986 between BRAE TRANSPORTATION, INC. and MORGAN GUARANTY TRUST COMPANY OF NEW YORK (as Trustee). The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and MORGAN GUARANTY TRUST COMPANY of New York, 30 West Broadway, New York, New York 10015

It is requested that the following documents be filed and recorded under the names of the parties as set forth below. In view of the fact that they relate to the EQUIPMENT TRUST AGREEMENT dated as of January 1, 1980 between BRAE TRANSPORTATION, INC. (formerly BRAE Corporation) and THE CONNECTICUT BANK AND TRUST COMPANY (as Trustee) previously recorded and assigned recordation number 11498, we request that they be assigned the next available letter designations under that primary number.

1. Two originals and five copies of the EIGHTH AMENDMENT dated as of February 12, 1986 between BRAE TRANSPORTATION, INC. and THE CONNECTICUT BANK AND TRUST COMPANY (as Trustee). The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and he CONNECTICUT BANK AND TRUST COMPANY, One Constitution Plaza, Hartford, Connecticut 06115-1600

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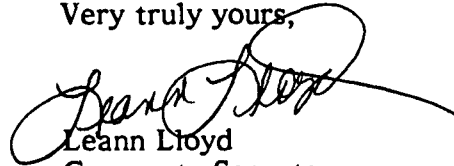
2. Two originals and five copies of the NINTH AMENDMENT dated as of April 11, 1986 between BRAE TRANSPORTATION, INC. and THE CONNECTICUT BANK AND TRUST COMPANY (as Trustee). The names and addresses of the parties to the transaction evidenced by the document described above are as follows:

BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 and he CONNECTICUT BANK AND TRUST COMPANY, One Constitution Plaza, Hartford, Connecticut 06115-1600

I also enclose a check in the amount of \$100.00 for the required recordation fees.

Please return: (1) your letter acknowledging the filings, (2) a receipt for the \$100.00 filing fee paid by check drawn on this firm, (3) the enclosed copies of this letter and (4) the originals and four copies of each of the document (retaining one for your files) all stamped with your official recordation information.

Very truly yours,



Leann Lloyd
Corporate Secretary

Enclosures

cc: Feroze Waheed

PARTICIPATION AGREEMENT

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PARTICIPATION AGREEMENT dated as of ^{INTERSTATE COMMERCE COMMISSION} June 2, 1986 (the "Agreement"), between BRAE RAILCAR MANAGEMENT, INC. ("Purchaser"), BRAE TRANSPORTATION, INC. (formerly BRAE Corporation) (the "Company") and CITICORP INDUSTRIAL CREDIT, INC. ("CIC").

RECITALS:

A. The Company and CIC entered into a Security Agreement, Chattel Mortgage and Lease Assignment dated as of September 20, 1979, as amended by Agreements dated as of January 10, 1980, February 13, 1980, April 30, 1980, September 9, 1982, March 22, 1985, June 28, 1985 (two Amendments so dated), April 9, 1986, April 29, 1986 and June 2, 1986 (as so amended, the "Security Agreement"), wherein (i) CIC agreed to finance the Company's acquisition of certain railcars and (ii) the Company granted CIC a security interest in said railcars and leases applicable thereto.

B. Pursuant to the Security Agreement, the Company executed and delivered to CIC the Consolidated Note (as defined in the Security Agreement).

C. CIC wishes to sell to Purchaser, and Purchaser wishes to purchase from CIC, an undivided fractional interest (the "Participation") in the Consolidated Note in the amount of \$1,500,000.00, which is equal to 22.321152% (the "Participation Percentage") of the outstanding principal amount of the Consolidated Note as of June 2, 1986.

D. The Company and CIC have executed the Tenth Amendment to the Security Agreement on the date hereof.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Incorporation. The foregoing recitals are incorporated herein by reference.

2. Definitions. Capitalized terms used in this Agreement and not defined herein shall have the meanings assigned to such terms in the Security Agreement.

3. Purchase and Sale of Participation Interest.
(a) Subject to the terms and conditions of this Agreement, CIC hereby sells to Purchaser and Purchaser hereby purchases and accepts (by execution of this Agreement) the Participation, including payments due pursuant thereto, in an amount equal to the

Participation Percentage. The purchase price for the Participation shall be \$1,500,000.00, payable by Purchaser to CIC in cash simultaneously with the execution of the Agreement. Upon receipt of such payment from Purchaser, CIC shall issue to Purchaser a Participation Certificate in the form attached hereto as evidence of Purchaser's Participation. Purchaser shall not have the right to transfer all or any part of the Participation to others without the prior written approval of CIC.

b) The delivery to Purchaser of the Participation Certificate shall constitute a sale and assignment by CIC to Purchaser of the Participation in said Consolidated Note to the extent of the amount stated in such Certificate and shall not constitute a loan by Purchaser to CIC. Nothing herein contained shall be deemed to convey any right, title or interest in any of the personal property securing payment pursuant to the terms of the Consolidated Note nor in any residual value, if any, of such personal property, nor any right to claim any such right, title or interest therein. However, as holder of the Participation, Purchaser shall be entitled to receive its proportionate share of the scheduled periodic payments owing and due to CIC by the Company, in accordance with the terms of the Consolidated Note, in the manner and to the extent herein set forth.

4. Representations, Warranties and Covenants of CIC. CIC represents, warrants and covenants as of the date hereof that the execution, delivery, and performance by CIC of this Agreement has been duly authorized by all necessary corporate action. Purchaser hereby acknowledges and agrees that (i) CIC or its agents has made no warranties or representations, express or implied, other than as above set forth in this Paragraph 4, nor does CIC assume any liability to Purchaser with respect to the validity, enforceability, value or collectibility of the Consolidated Note, the Security Agreement, this Agreement or of any related guaranty or security agreement; (ii) CIC shall not be liable to Purchaser for any action of, or failure to act or mistake on the part of any of CIC's agents, officers, employees or attorneys with respect to any transactions relating to the Consolidated Note, the Security Agreement or this Agreement; and (iii) CIC makes no representations or warranties and assumes no liability to Purchaser with respect to the financial worth, solvency or condition of the Company or of any guarantor of the Company's obligations.

5. Representations, Warranties and Covenants of the Company The Company hereby represents, warrants and covenants as of the date hereof that the execution, delivery, and performance by the Company of this Agreement has been duly authorized, acknowledged and consented to by all necessary corporate action.

6. Representation, Warranties, and Covenants of Purchaser. Purchaser hereby represents, warrants and covenants as of the date hereof that: (i) the execution, delivery, and performance by Purchaser of this Agreement has been duly authorized by all

necessary corporate action; (ii) in reaching its decision to purchase the Participation, Purchaser without reliance upon any representation of CIC, made and has relied solely on its independent credit analysis and judgement; (iii) in formulating its independent judgement, Purchaser has chosen not to request or review CIC's credit file or rely upon any information provided by CIC with respect to Company, because Purchaser is an affiliate of Company and has a detailed knowledge of Company's financial conditions and operations; and (iv) Purchaser has reviewed such other financial statements, documents and information as Purchaser obtained independently and deemed appropriate.

7. Purchaser's Right to Direct Payments. Provided that no event of default under the Security Agreement ("Event of Default") has occurred and is continuing, and subject to the subordination provisions set forth in Paragraph 8 hereof, the Company will pay directly to Purchaser a portion of each payment made on the Consolidated Note ("Debt Payment") in an amount equal to the Participation Percentage of such Debt Payment. It is understood and agreed that CIC shall not be obligated to make any payments to Purchaser, and CIC shall not be liable for any damages to any party resulting from a failure by Company to pay Purchaser.

8. Subordination of Purchaser's Rights. Purchaser's right to payment pursuant to this Agreement shall be subordinate to CIC's right to payment of all amounts owing and due to CIC under the Security Agreement and the Consolidated Note. In addition, upon the occurrence of an Event of Default (i) all decisions, rights, and remedies under the Security Agreement may be exercised solely by CIC; (ii) CIC shall have no obligation of any kind to protect, preserve or enforce the subordinated rights and remedies of Purchaser; and (iii) Company will pay the full amount of each Debt Payment to CIC until CIC has received all amounts owing and due CIC under the Security Agreement and/or the Consolidated Note and/or this Agreement. Furthermore, irrespective of whether there is an Event of Default, Company agrees and covenants that it may not and will not prepay Purchaser any amount without the prior written consent of CIC nor pay Purchaser any amount until it shall have fully paid CIC all amounts owing and due to it by Company at the time Purchaser is to be paid.

9. Indemnity. In addition to the foregoing, Purchaser agrees and covenants to indemnify CIC (i) for any and all expenses, costs, claims, damages or losses that CIC suffers (including, but not limited to, attorneys' fees) as a result of any claims (including, but not limited to, tax claims) incurred or asserted with respect to the Participation; and (ii) for any and all taxes, claims and/or related expenses which CIC is required to pay with respect to the Participation. CIC's indemnity claim hereunder may be set off against the Participation and the indemnity obligation hereunder shall survive the termination of this Agreement.

10. Counterparts and Binding Effect. This Agreement may be executed in three counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single instrument. This Agreement shall not be effective nor binding with respect to any of the parties until it shall have been executed by all of the parties and each of the parties has received evidence of such execution.

11. Governing Law. The provisions of this Agreement and all rights and obligations of the parties hereunder shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, CIC, Purchaser and Company have caused their names to be signed hereto by their respective officers hereunto duly authorized as of the date hereof.

CITICORP INDUSTRIAL CREDIT, INC.

By: 

Title: V.P.

BRAE RAILCAR MANAGEMENT, INC.

By: 

Title: V.P. - Finance

BRAE TRANSPORTATION, INC.

By: 

Title: V.P. - Finance